Issued by THE LABOR AND INDUSTRIAL RELATIONS COMMISSION

FINAL AWARD ALLOWING COMPENSATION
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 04-131302

Employee: Sabrina L. (Brock) Fisher

Employer: Bristol Care, Inc.

Insurer: Missouri Retailers Insurance Trust

Additional Party: Treasurer of Missouri as Custodian of Second Injury Fund

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated April 14, 2008. The award and decision of Administrative Law Judge Robert B. Miner, issued April 14, 2008, is attached and incorporated by this reference.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 2nd day of February 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

SEPARATE OPINION FILED
John J. Hickey, Member

Attest:

Secretary

SEPARATE OPINION

Concurring in Part and Dissenting in Part

After a review of the entire record as a whole, and consideration of the relevant provisions of the Missouri Workers' Compensation Law, I believe the decision of the administrative law judge should be modified.

I agree with my fellow commissioners that employee is entitled to compensation in this claim. However, I disagree with the finding that employee only suffered an 8% permanent partial disability to the body as a whole as a result of her bilateral carpal tunnel syndrome. I believe employee has proven a greater degree of disability and that the award should be modified to increase the award of permanent partial disability to a 20% permanent partial disability to the right wrist and 10% permanent partial disability to the left wrist, with a 10% load factor. I also disagree with the administrative law judge's finding that employee is not entitled to an award of future medical care and treatment.

Permanent Partial Disability

The extent and percentage of a disability is a finding of fact within the special province of the Commission. *Ransburg v. Great Plains Drilling*, 22 S.W.3d 726, 732 (Mo.App. W.D. 2000) (overruled on other grounds by *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo.banc 2003). The Commission may consider all of the evidence, including the employee's testimony, and draw reasonable inferences in arriving at the percentage of disability. *Id.*

I believe the evidence supports that employee is entitled to a greater percentage of disability than awarded by the administrative law judge. Employee provided ample testimony with respect to her symptoms and how her work directly caused an increase in symptomology. Employee testified that she began experiencing problems with her upper extremities around six months after beginning work for employer. Employee's symptoms included pain, numbness and tingling. Employee's symptoms progressively worsened while working for employer, making her job duties and household tasks more difficult. Over the course of her employment, employee experienced increased pain in her hands and wrists; difficulty gripping and writing; and dropped things. Employee testified that when she reduced her work hours, that her symptoms improved. Upon resuming her normal work schedule, her symptoms got worse. Employee had to stop working for employer because of the pain in her hands and back. Following the end of her employment with employer, employee continued to experience problems with her upper extremities which worsened with increased use of her hands.

Employee's testimony was supported by medical expert testimony provided by Dr. Stuckmeyer. Dr. Stuckmeyer opined that employee's repetitive work was a substantial contributing factor in the development of bilateral carpal tunnel syndrome which caused symptoms including pain, loss of strength, tingling and numbness of the upper extremities. Dr. Stuckmeyer concluded that as a result of employee's bilateral carpal tunnel syndrome, employee suffered a 20% permanent partial disability to the right wrist and 10% permanent partial disability to the left wrist, with a 10% load factor.

Dr. Stuckmeyer based his opinion on his examination of employee as well as the history she provided. I believe Dr. Stuckmeyer's findings as to employee's permanent partial disability more accurately reflects the level of employee's disability. Therefore, I find his opinion regarding the extent and percentage of disability most persuasive and worthy of belief.

Future Medical Care and Treatment

I also believe that the administrative law judge erred in finding that employee failed to establish that she was entitled to an award of future medical care and treatment. I believe the evidence suggests otherwise.

Under section 287.140.1 RSMo (2000), employer is responsible for providing treatment that may reasonably be required after the injury to cure and relieve the employee from the effects of the injury. Future medical benefits may be awarded if employee shows by "reasonable probability" that he is in need of additional medical treatment by reason of his work-related accident. *Landers v. Chrysler Corp.*, 963 S.W.2d 275, 283 (Mo.App. E.D. 1997).

Employee provided sufficient evidence that there was a need for ongoing medical treatment. Employee continues to experience ongoing symptoms in her upper extremities. Employee experiences numbness, tingling and pain in both hands. Her condition affects her ability to drive and write and also wakes her up at night. Employee experiences increased pain with activities requiring lifting or pulling. Employee testified that her condition limits activities that she is able to do at work and at home. Employee has modified her activities as a result.

Dr. Concannon testified that at this stage he would recommend treating employee's bilateral carpal tunnel syndrome with carpal tunnel releases on both employee's right and left hands. Furthermore, Dr. Concannon's opinion is supported by Dr. Stuckmeyer, who opined that the treatment recommended by Dr. Concannon was necessary to cure and relieve employee from the effects of employee's bilateral carpal tunnel syndrome.

The overwhelming weight of the competent and substantial evidence reveals that employee has shown by reasonable probability that she is in need of additional medical treatment for her work-related occupational disease.

Conclusion

Employee has shown that she is entitled to a greater degree of disability than awarded by the administrative law judge in this case. Employee has also shown that she is entitled to an award of future medical care and treatment.

Accordingly, I would modify the decision of the administrative law judge to increase the percentage of disability to 20% permanent partial disability to the right wrist and 10% permanent partial disability to the left wrist, with a 10% load factor. In addition, I would award employee future medical care and treatment for employee's bilateral carpal tunnel syndrome.

For the foregoing reasons, I respectfully dissent from the majority's decision.

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John J. Hickey, Member

AWARD

Employee: Sabrina L. Brock (now known as Sabrina L. Fisher) Injury No.: 04-131302

Employer: Bristol Care, Inc.

Additional Party: Treasurer of the State of Missouri as Custodian of the Second Injury Fund

Insurer: Missouri Retailers Insurance Trust

Hearing Date: February 28, 2008 Checked by: RBM

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes.

2. Was the injury or occupational disease compensable under Chapter 287? Yes.

3. Was there an accident or incident of occupational disease under the Law? Yes.

4. Date of accident or onset of occupational disease: Through October 13, 2004.

5. State location where accident occurred or occupational disease was contracted: Brookfield, Linn County, Missouri.

6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.

7. Did employer receive proper notice? Not applicable.

8. Did accident or occupational disease arise out of and in the course of the employment? Yes.

9. Was claim for compensation filed within time required by Law? Yes.

10. Was employer insured by above insurer? Yes.

11. Describe work employee was doing and how accident occurred or occupational disease contracted: Claimant engaged in cumulative repetitive cleaning, housekeeping, cooking, and paperwork.

12. Did accident or occupational disease cause death? No

13. Part(s) of body injured by accident or occupational disease: Right hand, right wrist, left hand and left wrist.

14. Nature and extent of any permanent disability: 8% body as a whole for injury to the right hand, right wrist, left hand and left wrist.

15. Compensation paid to-date for temporary disability: None.

16. Value necessary medical aid paid to date by employer/insurer? None.

17. Value necessary medical aid not furnished by employer/insurer? $13,938.44, including mileage.

18. Employee's average weekly wages: $101.51 for temporary total disability and $193.50 for permanent partial disability.

19. Weekly compensation rate: $67.71 for temporary total disability and $129.06 for permanent partial disability.

20. Method wages computation: Agreement of the parties.

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses, including mileage: $13,938.44.

3 6/7 weeks of temporary total disability at the temporary total disability rate of $67.71 per week: $261.17.

32 weeks of permanent partial disability from Employer at the permanent partial disability rate of $129.06 per week: $4,129.92.

No weeks of disfigurement from Employer.

22. Second Injury Fund liability: Not determined.

TOTAL: $18,329.53.

23. Future requirements awarded: None.

Said payments to begin immediately and to be payable and be subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a lien in the amount of 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Rick E. Koenig.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Sabrina L. Brock (now known as Sabrina L. Fisher) Injury No.: 04-131302

Employer: Bristol Care, Inc.

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PRELIMINARIES

A hearing was held in this case in Linneus, Missouri on February 28, 2008. Employee, Sabrina L. Brock, now known as Sabrina L. Fisher ("Claimant") appeared in person and by her attorney, Rick E. Koenig. Employer, Bristol Care, Inc. ("Employer") and Insurer, Missouri Retailers Insurance Trust ("Insurer") appeared by their attorney, Susan M. Turner. The Second Injury Fund is a party to this case, but was not represented at the hearing since the parties agreed to leave the Second Injury Fund claim open. Rick E. Koenig requested an attorney's fee of 25% from all amounts awarded. It was agreed that briefs would be due on March 13, 2008.

STIPULATIONS

At the time of the hearing, the parties stipulated to the following:

- On or about October 13, 2004, or on such other date determined to be Claimant's last day of work for Employer, Bristol Care Inc. (Employer) was an employer operating under the provisions of the Missouri Workers' Compensation Law.
- On or about October 13, 2004, or on such other date determined to be Claimant's last day of work for Employer, the liability of Employer under said law was fully insured by Missouri Retailers Insurance Trust (Insurer).
- On or about October 13, 2004, or on such other date determined to be Claimant's last day of work for Employer, Sabrina L. Brock (Claimant) was an employee of Employer, and was working under the provisions of the Missouri Workers' Compensation Law.
- A claim for compensation was filed within the time prescribed by law.
- The average weekly wage was $101.51 per week for temporary total disability and $193.50 per week for permanent partial disability. The rate of compensation for temporary total disability is $67.71 per week and the rate of compensation for permanent partial disability is $129.06 per week.
- Claimant seeks payment of four weeks of past temporary total disability benefits.
- The medical bills that had been incurred to treat Claimant were reasonable and necessary and the charges were fair and reasonable.
- Claimant's claim against the Second Injury Fund remains open.

ISSUES

The parties agreed that the following issues are in dispute in this case:

- Whether Claimant sustained an injury by accident or occupational disease arising out of and in the course of her employment for Employer.

- Whether Employer had notice of Claimant's alleged injury, and whether Claimant was required to give notice of her alleged injury to Employer.
- Whether Claimant's alleged injury was medically causally related to an accident or occupational disease arising out of and in the course of her employment for Employer.
- Employer's and Insurer's liability for past and future medical treatment.
- Employer's and Insurer's liability for mileage reimbursement.
- Employer and Insurer's liability for temporary total disability benefits.
- Nature and extent of permanent partial disability.
- Disfigurement.

Claimant testified in person. In addition, Claimant offered the following exhibits which were admitted in evidence without objection:

- Curriculum Vitae of Dr. James A. Stuckmeyer.
- Anatomical drawing plate 434.
- Claimant's Claim for Compensation shown received by Div. of Worker's Compensation on February 14, 2005.
- Medical report of Dr. James A. Stuckmeyer dated January 29, 2008.
- Medical report of Dr. James A. Stuckmeyer dated November 19, 2005.
- Mileage Summary for Sabrina Brock.
- Daily Work of Sabrina Fisher (Brock).
- Medical bill and medical records of Moberly Regional Medical Center.
- Medical bill and medical records of Sweet Springs Therapy Center Inc., Brunswick Therapy Center.
- Medical bill and medical records of Heartland Neurology, LLC.
- Medical bills and medical records of Midwest Bone and Joint Center.
- Photographs-Sabrina Brock-wrist braces.
- Letter dated December 28, 2004 from Rick Koenig to David Furnell, Bristol Care, Inc.

Employer/Insurer offered Exhibit 1, Deposition of Matthew Concannon dated May 24, 2007, which was admitted in evidence without objection.

Claimant and Employer/Insurer jointly offered Exhibit U, Deposition of Sabrina Brock dated June 17, 2005, which was admitted in evidence without objection:

SUMMARY OF THE EVIDENCE

CLAIMANT'S TESTIMONY

Claimant testified at the hearing. I find that Claimant was a credible witness. Claimant testified that she was 29 years old. She started working for Employer in November 2002. Employer is a residential care facility. Residents were elderly and developmentally disabled. It was a step before a nursing home. There were usually twelve residents. Occasionally there were as few as nine residents. Claimant stated that she prepared Exhibit N, a summary of her daily work at Employer. She stated she

worked at Employer during the work week and occasionally on weekends. Her typical hours worked were 8:00 a.m. until 2:00 p.m. She averaged between 30 and 36 hours per week until she injured her neck and back in June 2004. Her neck and back injury was not related to her work for Employer. Her hours worked for Employer decreased for a time after her back and neck injury, but then increased later to full-time. She was off work completely for six weeks from July 2004 until the first of September 2004. She then worked part-time for Employer until the beginning of October 2004. She last worked for Employer on either October 31, 2004 or November 1, 2004. She said she did the same type of work for Employer the whole time she worked there.

Claimant testified that the first things she did at work was clear out breakfast. She put up dishes and pans. She cleaned up dishes in the dining area. She grabbed as many as she could. She scraped dishes, rinsed cups, and put them in a dishwasher. She scraped pots and pans and wiped down tables and counters. She lifted and carried plates underhanded. She estimated they weighed between 7 and 8 pounds. Claimant stated that she was 4'9" tall and weighed 136 pounds. She said she moved quickly when performing her duties. She carried plates 25 to 30 feet to the kitchen. She carried coffee cups into the kitchen. She grabbed them awkwardly in a claw-like manner. She cleaned large skillets. She said lifting the skillets and pots caused pain. The weight of the pots varied from 3 to 4 pounds to 10 to 12 pounds when they had potatoes and water. She held the pots with her left hand and scrubbed them with her right hand. She loaded the dishwasher using both hands. It took her thirty minutes to do the breakfast duties.

Claimant then went to the rooms and changed towels and put up trash. She felt awkwardness through her wrists and forearms. She pulled trash bags out and tied knots in them. The trash weighed about 2 pounds. She spent thirty minutes performing those tasks. Claimant said she scrubbed two or three residents' bathrooms each day. She scrubbed the showers, tubs, sinks and cabinets. She used a sink brush for the showers and sinks. She scrubbed with both hands. It took between ten and fifteen minutes to scrub the showers. She squeezed a pump spray bottle. She rubbed down the fronts of cabinets with a rag. She swept floors with a broom and mopped floors with a rag mop. She twisted the mop with her hands to get the water out. She mopped for about five minutes. She said it took about one hour to clean the bathrooms.

Claimant also did laundry. She picked up four baskets of personal laundry and bed sheets and washed and dried them before doing other duties. She said the baskets weighed a lot and pulled on her wrists and hands. She said she had to move as fast as she could to get it done. Sometimes laundry would get tangled and she would pull it with both hands. She folded the laundry on a table after kitchen clean up. It took between thirty and forty-five minutes to do laundry. She also did vacuuming in the residents' rooms. There were fifteen rooms total. The residents' rooms were roughly 18 feet by 18 feet. She used an upright vacuum cleaner. She used both hands to vacuum and moved the vacuum from side to side. She moved small tables and nightstands with her left hand. They weighed about 10 pounds on average. She vacuumed for about an hour.

Claimant started her lunch duties by 11:00 a.m. She prepared a dessert using a large mixing bowl. She stirred cookie dough. She peeled between 5 and 7 pounds of potatoes four days each week. Her hands fell asleep when she peeled potatoes. She used a paring knife. She also prepared meat and sometimes put roasts that weighed 4 pounds into a roasting pan. She opened cans of vegetables with a hand crank opener. She opened either six smaller cans of vegetables or one large industrial size can.

Pain shot down both of her wrists when she did that. She cleaned up, washed dishes, and scrubbed pots and pans. She served food to the residents. She carried plates. Her symptoms got worse as time went on. It got bad in the spring and early summer. She cleaned up after lunch like she did after breakfast. She also passed residents' medication after lunch. The medicine was in childproof containers that were hard to open. She took a twenty minute break while the residents ate lunch. The lunch duties, including cleanup, took between one and one-half and two hours.

Claimant testified she did paperwork after she passed medication. She wrote up medication dosages, doctors' orders, and nursing assessments. She wrote with her right hand for forty-five minutes or longer. Writing got difficult for her as time went on. She also went grocery shopping once each week and purchased between one and two carts full of groceries. She said that she also moved heavier items of furniture and vacuumed under that furniture about once per month. She moved the furniture by herself most of the time. She picked up the ends of the furniture that weighed up to 50 pounds. She felt a pulling in her wrist when she did that.

Claimant stated that she saw two doctors—Dr. Concannon and Dr. Stuckmeyer. She told Dr. Concannon that she was a CNA and did housekeeping. She did not describe her work duties to Dr. Concannon, but did describe her work duties to Dr. Stuckmeyer. She provided a copy of Exhibit N to Dr. Stuckmeyer.

Claimant testified that when she began work for Employer in November 2002, her hands and wrists were fine. She said that about six months after she started working for Employer, she began waking up at night with her hands and thumb asleep. That progressed to the palm of her hand through her index and middle fingers. Her condition progressed to numbness and tingling. She had to shake her hands after she had been working for Employer for about one year. Her condition got worse in the spring of 2004. She had more pain through her wrists. It was worse on the right than the left. She had numbness and her symptoms were constant at the worst. She said her numbness and tingling came and went, and was worse with activity. It was constant in the right thumb and fingers. She had pain at the base of her wrists into her palms when she scrubbed showers. She switched her hands when she scrubbed showers. Her hands went numb. She had less strength in her hands during this time and she could not open jars or pop cans. She shook out her hand when she peeled potatoes. She dropped things and found it difficult to hold a pan. She began staying at work later to get her work done.

Claimant stated that she had an accident outside of work in June 2004 that injured her neck and back. Her hours working were reduced after the accident. She continued to have problems waking up at night. She was off work for six weeks in the summer of 2004. Her numbness was severe then. She told her assistant manager at Employer in the spring of 2004 that she was having problems and that it was really bothering her. Her assistant manager did not tell Claimant to see a doctor. She did not tell anyone else at work about her complaints. She said she was not sure what she was supposed to do. She said she worked part-time in September 2004, and then went to thirty to thirty-six hours per week for about four weeks in October 2004. She rearranged a lot of heavy furniture with help in October 2004. Her numbness and pain were the same after her work in October 2004 as they had been in the spring of 2004.

In October 2004, Claimant told a new manager at Employer, Linda, that her hands were really bothering her. She reported that she was having trouble lifting, that her hands were hurting, and that she had numbness and pain. She told the manager that she was going to see her doctor on October 13, 2004 for her back, and that she was going to have the doctor look at her hands. Claimant said that Linda said

okay. Claimant saw a nurse practitioner, Nola Moore, in Dr. Main's office, in October, November and December 2004. Claimant stated that she stopped working at Employer because of pain in her hands, neck, and back. She said she stopped working on October 31, 2004 or November 1, 2004. After she quit work, she saw the doctor, had therapy, went to vocational rehabilitation, and then went to school.

Claimant stated that in October 2004, she started getting a knot on the back of her left wrist. She had more pain on her left wrist and hand. She had physical therapy on both hands, but more on the left. She said therapy helped her left hand but not her right. Dr. Main performed surgery on her right hand in 2005. Nola Moore had recommended surgery in December 2004, but Claimant did not have surgery then. She had surgery after she hired an attorney and he sent a letter to Employer. Claimant said she did not work between December 2004 and her surgery in August 2005. She had her surgery because she was tired of the numbness. She said her symptoms were the same during that time. She woke up at night and had numbness and tingling. She had pain. Her hands fell asleep easily. She needed help with heavy lifting. She said she was not very active then. Activity caused her symptoms to flare up. She did her regular household work. Her symptoms improved some after she quit work. She denied that her symptoms worsened after she left Employer. She told Dr. Concannon that she could not stand it anymore. She had surgery on August 3, 2005 in Moberly.

Claimant stated that the medical mileage shown in Exhibit M was correct. She identified the medical records and bills of Dr. Main, the hospital, an EMG, and therapy at Sweet Springs in Exhibits O, P, Q, and R. Claimant identified photographs of her wrist braces in Exhibit S. She testified that she obtained those braces in November 2004. She said she wore them at night and they were helpful. Claimant stated that Dr. Concannon recommended surgery on both wrists. She said she is interested in having surgery. She said she did not have a problem seeing Dr. Concannon.

Claimant testified that her housework at home was less than the housework she did when she worked for Employer. She did things at home once per week, and not every day. She cared for a lot more people, and at a different pace, at work.

Claimant said she had been in college and had not been employed for 2 ½ years before going to work for Employer. She had worked as a cook before going to college. She stated she had not had any complaints or pain or limitations with her hands or wrists before she began working for Employer. She said she was diagnosed with a thyroid disease in 2003 and was treated with Synthroid and Prednisone for three months. Her problem cleared up after that. She said she is borderline diabetic, or pre-diabetic. She stated she was not taking medication. She took medication for diabetes in about 2005. She said her testing was within normal limits and she treated her condition currently with diet.

Claimant testified that she now works as a case manager for the state. She does monthly home visits, personal plans, and write ups. She testified that she continues to have problems with her hands. She said she still has numbness through her palm, index fingers, and ring fingers in both hands. She stated she did not have constant numbness and tingling. She said her hands wake her up at night, once or twice most nights. When that happens, she shakes her hands. She said the pain in her hands varies depending on activity. It hurts her to lift skillets. She has people help with opening jars and gardening. It hurts her to shovel. It is hard for her to pull weeds. She said that she constantly shakes her hands to get feeling back when she drives. She said she is able to do her work duties. She stated that she believed it was her work at Employer that caused her problems. She said that her diabetes is under control.

Claimant testified on cross-examination that she still had the same symptoms with activity after she left Employer, though not to the same degree. Activity brought the same pain. Her surgery in August 2005 resolved her symptoms for the most part, but the symptoms never went away completely. Her symptoms did not worsen after the surgery. She acknowledged that the November 2004 EMG indicated carpal tunnel on the right, but normal on the left. She admitted that she had a second job while working at Employer. She said her second job involved working every other weekend. She acknowledged that in the fall of 2004, she lived with her parents and cared for her own children. She said she cooked for herself, her three children, her parents, and her brother. She said that she cleaned her family's house three days per week. She drove and shopped for the family's groceries. She agreed that she was diagnosed with diabetes in 2003, not 2005. She stated that the amount of paperwork she did at Employer varied day to day. She stated that she cleaned up at home after meals, and that took a few minutes. She said some family members took dishes and vacuumed.

Claimant's deposition taken by Employer and Insurer's attorney on June 17, 2005 was admitted as Exhibit U. Claimant testified in her deposition that her last Employer was Employer. She testified that she left either the end of October or the first of November. She stated she did housekeeping, cooking and paperwork. Paperwork consisted of the EDL's, medication records, doctors' orders, monthly summaries, and inspection reports. She said there were twelve residents there. She said that she usually worked thirty to thirty-six hours per week. She said she was considered a full-time employee. She earned $6.45 per hour. Her hours were eight o'clock to two o'clock Monday through Friday. She sometimes worked ten to twelve hours a day if the manager needed to be gone. She stated for most of the time she was there, she was the only employee besides the manager.

Claimant estimated she spent two to three hours per day doing housekeeping. She changed the towels and did trash. She scrubbed bathrooms and showers. She did the floors, vacuuming, and dusting. Once a month they moved furniture and cleaned underneath everything. The furniture was beds, dressers, and recliners in all the rooms. She spent roughly one to two hours per day cooking. She spent one to three hours per day doing paperwork. The residents generally watched TV or visited with each other while she worked. The residents were all ambulatory and were between sixty-seven and 101 years old. She left Employer because of the pain in her hands and back. They did a lot of rearranging and lifting furniture in October because they had a new manager. A new employee helped her do that. That employee worked about a month.

Claimant stated that she went to college before she worked for Employer. She worked at the Grand River Inn as a cook for five months before college. She said she is right-handed. She said that numbness and pain in both wrists and both hands started about six months after she began working at Employer. When it first began, her symptoms were mostly in the morning when she would first wake up. They would go away after about an hour. It progressively got worse. She started developing a knot on the middle of the wrist of her right hand. She always had the same position at Employer doing housekeeping, cooking, and paperwork. She first concluded that her symptoms were related to her work in the spring of 2004. She decided that it was work related when she had problems with her hands falling asleep and pain after peeling potatoes and doing several activities. The times she noticed it the worst was scrubbing the showers. Pain would shoot in her hands. When she peeled potatoes, she had to stop several times and kind of shake her hands to get the feeling back in them. She peeled potatoes three to four times a week, 4 or 5 pounds each time. She mentioned to an assistant manager in the spring that

she was having some trouble with numbness and pain in both of her hands. She did not mention it to her manager until October. She mentioned it to the new manager, but did not remember mentioning it to the previous one.

During the time that she worked for Employer, she also worked eighteen hours a week over the weekends in a supervisory role at Community Options in Chillicothe. She worked with developmentally disabled and took them shopping and helped them manage their money. She did not do cooking or cleaning there. She did a brief note at the end of each day. She worked nowhere else. She said she did not have problems with her hands when she was not working.

Claimant testified in her June 17, 2005 deposition that she injured her back in June of the prior year and was on leave for about four months. When she went back to work, she had to move furniture which aggravated her back really bad. She had pain and numbness down her legs. She said her hands improved during the four months that she was off work. She still had the numbness and pain at night and when she woke up, but during the day the symptoms were better. She did not work at Community Action or anywhere else during that four-month period. She was on bed rest for a little while, and then mostly just sat during that period. Nola Moore gave her braces for her hands which she wore at night. They helped with the swelling. Her hands swelled when she worked for Employer. She stated she still had pain in both hands at night and in the first part of the morning. It had not changed. The numbness was also the same. She did not work after she left Employer in October 2004. She was not working at the time of her deposition. She did not go to school from the time she left work for Employer. Her symptoms had improved during the day. She still had problems peeling potatoes. She had to have her kids open cans of Diet Pepsi. She said her symptoms pretty much had stayed the same. She was just not doing the same activities as before. She was not really doing anything that involved the use of her hands on any repetitive basis.

Claimant testified at her deposition that she was diagnosed with thyroid problems in 2003. She said she did not take any medicine for that. She had gone through a treatment of Prednisone and Synthroid. The treatment had worked. She said her levels were normal. She said she had been diagnosed with diabetes and was treating for that with Glucophage and a special diet. She said she took Midrin for migraines every once in a while. Her diabetes was diagnosed in April 2005. She usually took ibuprofen just for her hands. She took it every couple of days. She did not take prescription medication just for her hands. She denied doing any sewing or playing any musical instruments. She said that she had to lift 40 or 50 pounds several times a week when she worked for Employer. Her physical therapy helped. She said she spent probably one to three hours doing paperwork, an hour or two cooking, and two to three hours a day housekeeping. She spent about a half an hour a day giving residents their medication. She set up the medications. She spent about thirty minutes per week driving residents to the beauty shop for a time, but that stopped. She has three children. She lived with her children, her parents, and her younger brother. She cooked and did laundry at home. She did dishes and cleaned up three days out of the week.

MEDICAL TREATMENT

The medical records and medical bills of Midwest Bone and Joint Center, including Dr. Christopher Main and Nola Moore, RN, CS, FNP, were admitted as Exhibit R. The October 18, 2004 note regarding Claimant was signed by Dr. Main and Nola Moore. The note stated that Claimant was

treated by Nola Moore and the treatment plan was discussed with Dr. Main. The note stated that Claimant was back for follow-up after therapy for her chronic cervical strain. It noted she had a new complaint of left wrist pain over the dorsal aspect that she had had for the last couple weeks. She complained of some paresthesias that woke her up at night, and that she frequently dropped items. She had a positive Phalen's sign and a negative Tinel's sign. There was no evidence of ganglion cyst formation. It was recommended that Claimant have a course of physical therapy three times a week for two weeks for her left wrist tendonitis.

Exhibit P contained the medical records and bills of Sweet Springs Therapy Center Inc., a/k/a Brunswick Therapy Center. The records indicated that Claimant's therapy there began on November 3, 2004 for tendonitis left wrist. Therapy was three times per week for two weeks. The Initial Evaluation and Plan of Care dated November 3, 2004 noted that Claimant used to work at Employer as a CNA. Claimant was noted on the Initial Evaluation to have been involved in moving, lifting furniture, housekeeping, bathing residents, cooking, doing house chores, washing dishes, dusting, vacuuming, driving, and taking care of her three kids. The form also noted that Claimant had occasional left wrist throbbing to middle of hand and constant dull aching and pricking in the morning. The form noted moderate occasional cramping. Claimant's hand grip on the left was 15 pounds, and on the right was 50 pounds. The form noted Claimant "in the morning was unable to open jars; ↓ tolerance in holding things" with left hand; numbness left hand with fifteen to twenty minutes driving, holding on the steering wheel; reported dropping things; ↓ tolerance doing computer work for fifteen to twenty minutes; left-hand felt numb-just doing shower of the hair. The record noted: "Unable to wear ring to fit." Precautions were noted to be no lifting.

Midwest Bone and Joint Center's November 15, 2004 note was signed by Dr. Main and Nola Moore. It stated that Claimant had made improvement with her wrist pain. She was still being bothered by symptoms of paresthesias that was waking her up at night. She had more symptoms of dropping items. She had a positive Phalen's test. Her Tinel's sign was negative about the wrist. She had a positive median nerve compression test. A nerve conduction study was recommended. A cock-up wrist was provided. She was started on Cataflam.

Exhibit P included two pages of Brunswick Therapy Center's Progress Notes. The Progress Note dated November 17, 2004 stated that Claimant was starting to have some trouble with her right. The note stated that Claimant had CT before, so she hoped it was not acting again. The Progress Note dated November 19, 2004 contained a yellow highlight over the date: "11-19-04." The yellow highlight was on the exhibit at the time it was admitted in evidence. The highlight was not added by the Administrative Law Judge. The November 19, 2004 Progress Note stated that Claimant's right was bothering her more than her left. The November 23, 2004 Progress Note stated that day was Claimant's last day of physical therapy. She was noted to have achieved 100% of all established STG's and 80% LTG's.

Exhibit Q included an EMG/NCV report of Heartland Neurology dated December 9, 2004 regarding Claimant. The Interpretation in the report stated: "1. Moderate right-sided carpal tunnel syndrome. 2. No evidence of carpal tunnel syndrome on the left side."

Midwest Bone and Joint Center's December 17, 2004 note was signed by Dr. Main and Nola Moore. It stated that Claimant was treated by Nola Moore and the treatment plan was discussed with Dr.

Main. It stated that Claimant was back for follow-up on her peripheral paresthesias. The note stated her EMG study revealed moderate couple (sic) tunnel syndrome in her right hand. The note stated the study on Claimant's left hand was normal. She was continuing to be bothered by nocturnal pain and dropping objects. She had failed conservative treatment with bracing and anti-inflammatory medications. Claimant was told she had the options of learning to live with that versus an outpatient open carpal tunnel release. She was not interested in having that done at that time. It was recommended that she continue her brace and continue over the counter Ibuprofen on an as needed basis.

Exhibit R included a July 22, 2005 note signed by Dr. Main and Nola Moore. The letterhead of the note indicated at the top: "Midwest Bone and Joint Center, P.C., D. Christopher Main, D.O., Board Certified Orthopedic Surgeon." The note stated that Claimant was going to go ahead with surgical intervention for her right hand carpal tunnel syndrome. Exhibit R also included an August 3, 2005 History and Physical of Moberly Regional Medical Center signed by Dr. Main pertaining to Claimant. That record noted that Claimant's complaints of paresthesias involving the right hand had been going on for several weeks, and she was not having much improvement. She did not improve with conservative treatment and opted for surgical intervention. Dr. Main's impression was carpal tunnel syndrome, right hand. Claimant requested they proceed with surgery. Exhibit R included an Operative Report dated August 3, 2005 pertaining to Claimant. The report described the mini open right carpal tunnel release performed by Dr. Main for right-hand carpal tunnel syndrome.

Exhibit R included additional notes from Dr. Main's office. Claimant saw Nola Moore in Dr. Main's office on August 9, 2005. Claimant's incision was healing very well. Claimant saw Nola Moore again on August 15, 2005. She removed Claimant's sutures and recommended a continuation of her activity restrictions. Claimant saw Nola Moore on August 29, 2005. Claimant's incision was well healed. She complained of some swelling along the carpal tunnel. Her paresthesias had resolved. She was released from care on August 29, 2005.

EVALUATION OF DR. JAMES STUCKMEYER

Claimant was evaluated by Dr. James Stuckmeyer on November 14, 2005. Dr. Stuckmeyer's Curriculum Vitae was admitted as Exhibit D. It noted that Dr. Stuckmeyer was Board Certified by the American Board of Orthopedic Surgeons in 1989. Dr. Stuckmeyer's November 19, 2005 medical report regarding Claimant was addressed to Claimant's attorney, Rick Koenig. It was admitted as Exhibit H. The report noted that Dr. Stuckmeyer evaluated Claimant on November 14, 2005. The report noted that he reviewed the following records prior to preparing his report: Midwest Bone & Joint Clinic; Brunswick Physical Therapy; Moberly Regional Medical Center; Heartland Neurology; Children's Mercy Hospital; University Physicians-Brookfield; University Hospital; deposition of Claimant dated June 17, 2005; and Claim for Compensation.

The report noted that Claimant told Dr. Stuckmeyer that she worked for Employer for approximately two years in housecleaning. She stated that as a result of moving and lifting furniture, as well as cooking and paperwork, she began to develop symptoms of right and left upper extremity pain as well as the development of a knot on her left hand, and symptoms of numbness and tingling, wrist swelling, and nocturnal awakedness bilaterally, all of which became disabling to her on or about October 13, 2004. He noted that Claimant's deposition set forth in greater detail her occupational duties at Employer and how those duties affected her upper extremities.

Dr. Stuckmeyer's report summarized her course of treatment. It noted that electrodiagnostic studies performed on December 9, 2004 were consistent with moderate right carpal tunnel syndrome with no evidence of carpal tunnel syndrome on the left. The report noted that a right open carpal tunnel release was performed by Dr. Main on August 3, 2005.

Claimant told Dr. Stuckmeyer that she was improved concerning the right wrist and denied symptoms of numbness and tingling or nocturnal awakedness. She complained of bilateral decreased grip strength and stamina, hand pain, and wrist pain. He noted past medical history was significant for Hashimoto's disease and glucose intolerance. She was taking no medications. He further noted that Claimant was involved in a motor vehicle accident on June 8, 2004, and according to the medical records, was complaining primarily of cervical and low back symptoms. He noted there was no evidence of any injury to the wrists as a result of that motor vehicle accident.

Dr. Stuckmeyer performed a physical examination. He noted full range of motion of the right and left wrists. Claimant had a slightly positive Tinel's sign and Phalen's sign on the right. She had a negative Tinel's sign and negative Phalen's sign on the left. Grip strength on the right was 20 kg and on the left was 26 kg.

Dr. Stuckmeyer concluded that as a direct result of Claimant's occupational duties required upon her while employed with Employer, or for which those occupational duties were a substantial contributing factor to cause Claimant to develop bilateral carpal tunnel syndrome and an overuse syndrome of the upper extremities, which injuries became disabling to her on or about October 13, 2004. Dr. Stuckmeyer felt that Claimant had reached maximum medical improvement and that she suffered a 20% permanent partial disability to the right wrist and a 10% permanent partial disability to the left wrist at the 175 week level. He stated a 10% loading factor would be appropriate considering the bilateral nature of the injuries. He also stated that the medical treatment provided to her for the upper extremities, including the surgical intervention on the right upper extremity, was reasonable and necessary to cure and relieve Claimant of the effects of the injuries caused as a direct result of the occupational duties and resolving problems, which injuries became disabling to her on October 13, 2004. He stated that the medical bills for that treatment were fair and reasonable charges. He also stated that he believed that it was reasonable and necessary to have Claimant temporarily and totally disabled for a period of four weeks following her surgery on the right wrist, to cure and relieve her of the effects of the injuries caused as a direct result of the occupational duties which became disabling to her on October 13, 2004, or for which those occupational duties were a substantial contributing factor to have caused. He stated his opinions were to a reasonable degree of medical certainty.

Dr. Stuckmeyer's January 29, 2008 medical report regarding Claimant was addressed to Claimant's attorney, Rick Koenig. It was admitted as Exhibit G. Exhibit G noted that Dr. Stuckmeyer had reviewed his earlier report and supporting documents utilized to prepare that report; Daily Work of Claimant; deposition of Claimant; report and deposition of Dr. Matthew Concannon; and anatomical drawing plate 434. The report did not indicate that Dr. Stuckmeyer had reexamined Claimant. Dr. Stuckmeyer's January 29, 2000 report stated that he had examined and treated thousands of patients with carpal tunnel syndrome and had performed thousands of surgeries for carpal tunnel. Dr. Stuckmeyer described Claimant's occupational duties for Employer in detail as set forth on the Daily Work schedule. He noted that Claimant was required to rinse dishes; scrub pots and pans; load a dishwasher; wipe off

countertops and tables with dishrags; scrub sinks, countertops, door handles, towel bars, toilets and showers; collect laundry; vacuum all the various rooms; load laundry; open large cans of vegetables with a hand crank; peel 7 pounds of potatoes; prepare other foods; serve meals; clean dishes; fold laundry; prepare written reports; move furniture; grocery shop; remove snow; sweep; as well as other duties.

Dr. Stuckmeyer noted those duties were required on a continuous basis throughout the workday, and on a daily basis in her employment for Employer. He noted Claimant utilized both hands and wrists in performing those tasks. He noted that the nature of her employment required her to do those tasks on a repetitive basis and on a much greater magnitude than what is done as a person's ordinary household duties. He noted that the tasks at Employer required Claimant to continuously grasp, push, pull, flex, and extend

the wrists with various amounts of weight and pressure placed upon the hands and wrists. He stated that all of the tasks performed by Claimant in the course and scope of her employment at Employer were all stresses on the wrists that were repetitive trauma on the wrists, hands, and arms. He stated those repetitive traumas which accumulated over time and caused the tendons in her carpal canals to hypertrophy or get bigger. He also stated there more than likely was also synovial inflammation with carrying out those repetitive tasks. He stated that as the tendons hypertrophied and there was synovial inflammation, the median nerve was impinged and irritated at the carpal canal. He stated that an impingement and irritation of the median nerve lead to Claimant suffering pain, loss of strength, and tingling and numbness into her upper extremities.

Dr. Stuckmeyer stated that because the carpal ligament was cut during surgery, there was a loss of strength in the wrist and a build up of scar tissue that contributed to cause the symptoms to be permanent. Additionally the median nerve suffered permanent damage due to the impingement and irritation. Dr. Stuckmeyer's report stated that it was his opinion within a reasonable degree of medical certainty that as a direct result of the occupational duties required upon her while employed with Employer, or for which those occupational duties were a substantial contributing factor, to cause Claimant to develop the bilateral carpal tunnel syndrome and overuse syndrome of the upper extremities, necessitating the surgical procedure and resulting in a disability to her upper extremities as outlined in his previous report.

Dr. Stuckmeyer noted that Dr. Concannon had recommended additional treatment for Claimant's bilateral carpal tunnel syndrome. He stated that he did not disagree with Dr. Concannon's opinion that Claimant would benefit from additional treatment. Dr. Stuckmeyer stated this treatment was necessary to cure and relieve Claimant of the effects of the injuries she suffered as a direct result of the occupational cumulative trauma suffered in the course and scope of her employment for Employer, or for which that cumulative trauma was a substantial contributing factor to have caused. He stated that if this additional treatment as provided to Claimant, his opinions concerning for permanent partial disability may change. He stated that Claimant's employment at Employer and the cumulative trauma she suffered there was a substantial factor, if not the substantial factor to cause her development of the bilateral carpal tunnel syndrome. He stated that his opinions, statements and conclusions were stated to within a reasonable degree of medical certainty.

EVALUATION OF DR. MATTHEW CONCANNON

Dr. Matthew Concannon evaluated Claimant on August 23, 2006. The deposition of Dr. Matthew Concannon taken on May 24, 2007 was admitted as Exhibit 1. Objections contained in Exhibit 1 are overruled. Deposition Exhibit 1 is Dr. Concannon's twenty-one page Curriculum Vitae. It notes that he is a Diplomat of the American Board of Plastic Surgery and holds a Certificate of Added Qualification to the Surgery of the Hand by the American Board of Plastic Surgery. He is an Adjunct Associate Professor of Surgery at the University of Missouri, Columbia. He is Associate Editor for the Journal Plastic and Reconstructive Surgery. He is a member of the Board of Directors of the American Association for Hand Surgery. He is a member of numerous societies and committees. His CV also notes that he is the author or co-author of two books that deal with the hand, and the author or co-author of numerous book chapters and other publications. He has also made numerous presentations. Dr. Concannon is very highly qualified.

Deposition Exhibit 2 is Dr. Concannon's August 25, 2006 two page medical report addressed to Uhlemeyer Services Administrators. That report noted that he evaluated Claimant on August 23, 2006 for her bilateral hand complaints. He noted Claimant had complained of intermittent hand problems since approximately April 2004, and was previously employed as a nurse aide/personal assistant at Employer. She described her work activities and he reviewed her job description. She reported she had suffered from numbness in her hands prior to April 2004 for as long as a year. He noted that in approximately June 2004, a car she was driving got stuck on the railroad tracks and she had to rescue an inebriated passenger prior to the car getting struck by a train. He noted that she evidently suffered significant lumbar strain and spinal issues from carrying that 175 pound gentleman. That precipitated visits to her primary care physician, Dr. Chris Main. Dr. Main noted that he thought Claimant had bilateral carpal tunnel syndrome. She was referred for electrodiagnostic testing which demonstrated carpal tunnel syndrome on the right, but not on the left. Dr. Main performed a right carpal tunnel release in November 2005 [sic].

Dr. Concannon's report noted that Claimant related that since the surgery, she had gotten improvement in her symptoms, but not complete resolution of her symptoms. She had not worked at Employer since approximately November 2004. The report noted that in the year that followed, between her leaving employment at Employer and her obtaining carpal tunnel release, Claimant related that the symptomatology worsened to the degree where she could no longer stand it, thus facilitating her seeking out surgical decompression. Since that time she had had no further medical or surgical treatment for those issues. Dr. Main noted that Claimant was evidently a type II diabetic, and that had been diagnosed since the middle of 2004. In addition, she had a diagnosis of Hashimoyo's thyroiditis which was treated with Prednisone and Synthroid.

On physical examination, Claimant had full active and passive range of motion of her elbows, hands and wrists. The report noted that subjectively, Claimant's sensation was intact throughout her bilateral hands in the median, ulnar, and radial distributions. Vascularity was noted to be completely intact. Subjectively, Claimant complained of a pins and needles or numbness type feeling within the

median nerve distribution of the right as well as, to a lesser degree, on the left. Otherwise, the physical examination was completely normal.

Dr. Concannon noted that he concurred with the prior diagnosis of right carpal tunnel syndrome with regard to Claimant's current and past diagnosis. Dr. Concannon's report noted that he thought that currently, Claimant was suffering from either recurrent carpal tunnel syndrome or persistent carpal tunnel syndrome related to her persistence of symptoms noted to be improved. The report noted that Claimant very likely had a mild to moderate carpal tunnel syndrome developing on the left. The report stated that with regard to causality, it was Dr. Concannon's opinion, to within a reasonable degree of medical certainty, that the carpal tunnel syndrome that Claimant suffered from was not causally related to her employment. The report noted that was based on many factors including but not limited to, Claimant's activities during employment, her duration of employment, her age, and concurrent other medical issues.

Dr. Concannon testified in his deposition that he performed an independent medical examination of Claimant in August 2006. He discussed the history contained in his report. He testified that Claimant reported to him that in the year after she left Employer, and before getting her surgery, she related the symptomatology or her symptoms got worse to a degree where she could no longer stand it and that was why she sought out surgery. He recalled that she was a nurse aide and that she told him the different duties that she had with regard to that, but he could not repeat them. He discussed the findings that were also noted in his report. He arrived at a diagnosis that Claimant either had a recurrent or a persistent carpal tunnel syndrome on the right, and that she probably also had either mild or moderate carpal tunnel syndrome on the left. Dr. Concannon was asked occupationally what type of activities or jobs cause carpal tunnel or that he sees most often. He stated that what he sees most often is more like a factory line type of activity where they have a repetitious activity over and over again, relatively hand or upper extremity strenuous or intensive, because carpal tunnel syndrome is like a tenosynovitis or swelling in the carpal tunnel. He stated that multiple repetitive activities can certainly be a very common etiology for that.

Dr. Concannon was asked whether there are physical conditions that also are often seen in conjunction with carpal tunnel or can cause carpal tunnel outside of occupationally. He stated pregnancy, diabetes, and hypothyroidism are probably the biggest three, and all those relate to swelling of the tissue. He stated that diabetes makes the nerves more susceptible. He noted that Claimant had two of those three non-occupational physical conditions. Dr. Concannon stated that his opinion was that he did not feel that Claimant's employment was causally responsible for the carpal tunnel. He said that the reasons for that were he did not feel that the activities of her job made her particularly prone to developing a carpal tunnel, although it was possible but not likely. He said that she worked part-time but did not put in a lot of hours. He said that the fact her symptoms worsened after she left the job was another indication the job did not have much to do with it coupled with the risk factors medically that she had. He said his opinions had been to a reasonable degree of medical certainty.

Dr. Concannon testified on cross-examination that Claimant was a nurse aide. He could not state what her specific activities were. He stated that hypothyroidism can actually cause the carpal tunnel syndrome, and diabetes can make a more minor issue with the wrist more symptomatic. He said it would be fair to call Claimant's condition idiopathic. He stated it would be fair to state that he did not know what caused Claimant's carpal tunnel syndrome. He did not recall what Claimant did after she left Employer and before getting her surgery. He was asked if he ever diagnosed people with carpal tunnel

even though the EMGs were showing it as normal, and he answered, "Yes." He diagnosed Claimant when he saw her in 2006 with left carpal tunnel even though he did not have a positive EMG. He agreed that Claimant may very well have had diagnosable carpal tunnel syndrome in November 2004. That was based on Dr. Main's positive Phalen's test, and that Claimant also had the numbness and tingling consistent with an impingement on the median nerve that goes through the carpal canal.

Dr. Concannon stated that Dr. Main's treatment was reasonable and appropriate treatment to help cure and relieve Claimant of the effects of the carpal tunnel syndrome. Dr. Concannon recommended carpal tunnel release on both the right and left hands.

Employer and Insurer's counsel, on redirect, stated that Claimant testified in her June 17, 2005 deposition that she did housekeeping, cooking, and paperwork, and kept medication records, doctors orders and monthly summaries, and spent two to three hours a day housekeeping and might change towels, empty the trash, clean bathrooms, and that she might cook, prepare meals maybe two hours a day. Dr. Concannon was asked if those were the kind of activities in his experience that would result in carpal tunnel, particularly if performed on a part-time basis. Dr. Concannon answered, "Well not typically; I mean, anything is possible but not typically." Dr. Concannon stated that he would not expect carpal tunnel symptoms to worsen if they were related to work, and then they left the job and were no longer doing any of those activities. He said the symptoms might stay the same.

Dr. Concannon said that he did not recall having seen a copy of Claimant's deposition dated June 17, 2005 when he evaluated Claimant. He testified that his report indicated what Claimant told him when he saw her, even though she testified in her deposition that since she left work, it pretty much stayed the same because she was not doing the activities that she was doing while she was working at Employer.

ADDITIONAL EXHIBITS

Exhibit M itemized 652 miles of medical mileage of Claimant from October 18, 2004 to December 17, 2004 and 488 miles of medical mileage from July 22, 2005 to August 29, 2005. Exhibit O included an itemized medical bill of Moberly Regional Medical Center relating to Claimant in the amount of $9,766.50 for surgery for carpal tunnel syndrome on August 3, 2005. Exhibit P included a medical bill of Sweet Springs Therapy Ctr, Brunswick Therapy Center, in the total amount of $665.00 relating to treatment of Claimant from November 3, 2004 through November 23, 2004. Exhibit Q included a medical bill of Heartland Neurology, LLC in the amount of $880.00 relating to treatment of Claimant on December 9, 2004. Exhibit R included medical bills of Midwest Bone and Joint relating to treatment of Claimant. Those bills were in the amounts of $1,833.00 for treatment by Dr. Main on August 3, 2005; $70.00 for treatment by Nola Moore on July 22, 2005; $70.00 for treatment by Nola Moore on December 17, 2004; $70.00 for treatment by Nola Moore on November 15, 2004; and $176.00 for treatment by Nola Moore on October 18, 2004. Exhibit T included Claimant's attorney's letter dated December 28, 2004 to David Furnell, Bristol Care, Inc., Certified Mail Receipt, and United States Postal Service confirmation of acceptance of the letter. The letter advised of Rick Koenig's representation of Claimant concerning injury to her upper extremities due to an occupational disease and specifically due to lifting furniture. It stated that Claimant was in need of medical treatment and requested that Mr. Furnell forward the letter onto his insurance company and asked them to contact Mr. Koenig to discuss Claimant's claim and need for treatment.

DISCUSSION

ACCIDENT, OCCUPATIONAL DISEASE, MEDICAL CAUSATION

Did Claimant sustain an injury by accident or occupational disease arising out of and in the course of her employment for Employer, and if so, was her injury medically causally related to an accident or occupational disease arising out of and in the course of employment?

Occupational diseases are compensable under the Missouri Workers' Compensation Act. The statute requires that the condition be an "identifiable disease arising with or without human fault and in the course of the employment."
Section 287.067.1, RSMo. For an injury to be compensable under the Act, the work performed must have been a substantial factor in causing the medical condition or disability. *Kent v. Goodyear Tire and Rubber Company*, 147 S.W.3d 865, 867-68 (Mo.App 2004).

An employee's claim for compensation due to an occupational disease is to be determined under Section 287.067.1, RSMo. It defines occupational disease as:

. . . an identifiable disease arising with or without human fault out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where the diseases follow as an incident of an occupational disease as defined in this section. The disease need not to have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.

Section 287.067.2, RSMo, provides that an occupational disease is compensable "if it is clearly work related and meets the requirements of an injury which is compensable as provided in subsections 2 and 3 of section 287.020. An occupational disease is not compensable merely because work was a triggering or precipitating factor." Section 287.067.7, RSMo, provides: "With regard to occupational disease due to repetitive motion, if the exposure to the repetitive motion which is found to be the cause of the injury is for a period of less than three months and the evidence demonstrates that the exposure to the repetitive motion with a prior employer was the substantial contributing factor to the injury, the prior employer shall be liable for such occupational disease."

Section 287.063, RSMo, provides:

1. An employee shall be conclusively deemed to have been exposed to the hazards of an occupational disease when for any length of time, however short, he is employed in an occupation or process in which the hazard of the disease exists, subject to the provisions relating to occupational disease due to repetitive motion as set forth in subsection 287.067, RSMo.
2. The employer liable for the compensation in this section provided shall be the employer in whose employment the employee was last exposed to the hazard of the occupational disease for which claim is made regardless of the length of time of such last exposure.
3. The statute of limitation referred to in section 287.430 shall not begin to run in cases of occupational disease until it becomes reasonably discoverable and apparent that a compensable injury has been

sustained. . . .

"When construing a statute, our primary goal is to ascertain the intent of the legislature from the language used and to give effect to that intent by giving the words used their plain and ordinary meaning." *State ex rel. Nixon v. QuikTrip Corp.*, 133 S.W.3d 33, 37 (Mo. banc 2004).

Claimant must present substantial and competent evidence that he or she has contracted an occupationally induced disease rather than an ordinary disease of life. The Courts have stated that the determinative inquiry involves two considerations: "(1) whether there was an exposure to the disease which was greater than or different from that which affects the public generally, and (2) whether there was a recognizable link between the disease and some distinctive feature of the employee's job which is common to all jobs of that sort." *Polavarapu v. General Motors Corp*., 897 S.W.2d 63, 65 (Mo.App. 1995); *Dawson v. Associated Elec.*, 885 S.W.2d 712, 716 (Mo.App. 1994), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 228; *Hayes v. Hudson Foods, Inc.*, 818 S.W.2d 296, 300 (Mo.App 1991); *Prater v. Thorngate, Ltd.*, 761 S.W.2d 226, 230 (Mo.App 1988); *Sellers v. Trans World Airlines, Inc.*, 752 S.W.2d 413, 415 (Mo.App. 1988); *Jackson v. Risby Pallet and Lumber Co*., 736 S.W.2d 575, 578 (Mo.App. 1987). In proving up a work-related occupational disease, "[a] claimant's medical expert must establish the probability that the disease was caused by conditions in the work place." *Smith v. Donco Const*., 182 S.W.3d 693, 701 (Mo.App. 2006) (citing *Brundige v. Boehringer Ingelheim*, 812 S.W.2d 200, 202 (Mo.App. 1991) (quoting *Sheehan v. Springfield Seed & Floral, Inc.*, 733 S.W.2d 795 (Mo.App. 1987)), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 226 S.W.2d 795, 797 (Mo.App. 1987)); *Dawson*, 885 S.W.2d at 716. There must be medical evidence of a direct causal connection between the conditions under which the work is performed and the occupational disease. *Coloney v. Accurate Superior Scale Co.*, 952 S.W.2d 755 (Mo.App. 1997), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 226; *Dawson*, 885 S.W.2d at 716; *Sheehan*, 733 S.W.2d at 797; *Estes v. Noranda Aluminum, Inc.*, 574 S.W.2d 34, 38 (Mo.App. 1978). Even where the causes of the disease are indeterminate, a single medical opinion relating the disease to the job is sufficient to support a decision for the employee. *Dawson*, 885 S.W.2d at 716; *Prater v. Thorngate, Ltd.*, 761 S.W.2d 226, 230 (Mo.App. 1988).

The cause of an employee's medical condition need not be a single traumatic event. An employee may obtain compensation pursuant to The Workers' Compensation Law for gradual and progressive medical conditions which result from repeated or constant exposure to hazards encountered by the employee in the workplace. *Smith v. Climate Engineering*, 939 S.W.2d 429 (Mo.App. 1996), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 227; *Rector v. City of Springfield*, 820 S.W.2d 639 (Mo.App. 1991). Diseases resulting from the chronic traumata of repetitive occupational body movements qualify for compensation if they cause an employee to sustain a loss of earning capacity. *Collins v. Neevel Luggage Manufacturing Company*, 481 S.W.2d 548, 555 (Mo.App. 1972); *Coloney*, 952 S.W.2d at 759.

Gradual and progressive injuries resulting from repeated exposure to on-the-job hazards is broad enough to now treat compensable aggravations of preexisting diseases or infirmities caused by nonaccidental conditions of employment as either accidents or occupational diseases. *Kelley v. Banta & Stude Const. Co., Inc.*, 1 S.W.3d 43, 49 (Mo.App. 1999); *Smith*, 939 S.W.2d at 436. Aggravation of a preexisting disease or infirmity caused by nonaccidental conditions of employment is compensable as either an accident or as an occupational disease. *Smith*, 939 S.W.2d at 436.

In claims for compensation for medical conditions associated with repetitive activities, a claimant must prove: 1) the injury arose out of and in the course of employment; 2) causation from job-related activities; and 3) nature and extent of disability. *Kintz v. Schnucks Markets, Inc*., 889 S.W.2d 121, 124 (Mo.App. 1994), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 228. Manipulations and flexions, iterated and reiterated within a concentrated time, are unusual conditions, and if they inhere in an employment task being performed by an employee, they expose the employee who performs them to a risk not shared by the public generally and to which the employee would not have been exposed outside of employment, and thus qualify for compensation pursuant to The Law. *Collins*, 481 S.W.2d at 555.

Missouri courts have interpreted section 287.063, RSMo to provide that an employee with an occupational disease is "injured" within the meaning of the section 287.120, RSMo when the disease causes a "compensable injury." *Coloney*, 952 S.W.2d at 759, citing *Hinton v. National Lock Corp.*, 879 S.W.2d 713, 717 (Mo.App. 1994) (citing *Prater v. Thorngate, Ltd.*, 761 S.W.2d 226, 228 (Mo.App. 1988)). The "injury" requirement of the Act necessitates that the employee's "injury" create a harm that tangibly affects the employee's earning ability. *Coloney*, 952 S.W.2d at 763; *Johnson v. Denton Constr. Co.*, 911 S.W.2d 286, 287 (Mo. banc 1995). Requiring that the harm tangibly affect the employee's earning ability upholds the intent of the legislature in enacting the Worker's Compensation Act which was to provide indemnity for loss of earning power and disability to work and not for pain, suffering, or mere physical ailment. *Coloney*, 952 S.W.2d at 760.

Section 287.020.2, RSMo requires that the injury be "clearly work related" for it to be compensable. Section 287.020, RSMo provides:

2. The word **'**accident' as used in this chapter shall, unless a different meaning is clearly indicated by the context, be construed to mean an unexpected or unforeseen identifiable event or series of events happening suddenly and violently, with or without human fault, and producing at the time objective symptoms of an injury. An injury is compensable if it is clearly work related. An injury is clearly work related if work was a substantial factor in the cause of the resulting medical condition or disability. An injury is not compensable merely because work was a triggering or precipitating factor.
3. (1) In this chapter the term 'injury' is hereby defined to be an injury which has arisen out of and in the course of employment. The injury must be incidental to and not independent of the relation of employer and employee. Ordinary, gradual deterioration or progressive degeneration of the body caused by aging shall not be compensable, except where the deterioration or degeneration follows as an incident of employment.
(2) An injury shall be deemed to arise out of and in the course of the employment only if:
(a) It is reasonably apparent, upon consideration of all the circumstances, that the employment is a substantial factor in causing the injury; and
(b) It can be seen to have followed as a natural incident of the work; and
(c) It can be fairly traced to the employment as a proximate cause; and
(d) It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life.

The employee must establish a causal connection between the accident and the claimed injuries. *Thorsen v. Sachs Electric Company*, 52 S.W.3d 611, 618 (Mo.App. 2001), *overruled in part on*

other grounds by Hampton v. Big Boy Steel Erection, 121 S.W.3d 220, 225 (Mo. 2003); *Williams v. DePaul Ctr*, 996 S.W.2d 619, 625 (Mo.App. 1999), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 226; *Fisher v. Archdiocese of St. Louis*, 793 S.W.2d 195, 198 (Mo.App 1990), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 230. Section 287.020.2, RSMo requires that the injury be "clearly work related" for it to be compensable. An injury is clearly work related, "if work was a substantial factor in the cause of the resulting medical condition or disability. An injury is not compensable merely because work was a triggering or precipitating factor." *Kasl v. Bristol Care, Inc.*, 984 S.W.2d 852 (Mo. 1999). Injuries that are triggered or precipitated by work may nevertheless be compensable if the work is found to be a "substantial factor" in causing the injury. *Kasl*, 984 S.W.2d at 853; *Cahall v. Cahall*, 963 S.W.2d 368, 372 (Mo.App. 1998), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 226. A substantial factor does not have to be the primary or most significant causative factor. *Bloss v. Plastic Enterprises*, 32 S.W.3d 666, 671 (Mo.App. 2000), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 225; *Cahall*, 963 S.W.2d at 372. An accident may be both a triggering event and a substantial factor in causing an injury. *Bloss*, 32 S.W.3d at 671. Further, there is no "bright-line test or minimum percentage set out in the Workers' Compensation Law defining 'substantial factor.'" *Cahall*, 963 S.W.2d at 372. The claimant in a workers' compensation case has the burden to prove all essential elements of his or her claim, *Royal v. Advantica Restaurant Group, Inc.*, 194 S.W. 3d 371, 376 (Mo.App. 2006), (citing *Cook v. St. Mary's Hosp.*, 939 S.W.2d 934, 940 (Mo.App. 1997)), *overruled on other grounds by Hampton*, 121 S.W.3d at 226, *Fischer v. Arch Diocese of St. Louis-Cardinal Ritter Inst.*, 793 S.W.2d 195, 198 (Mo.App. 1990), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 230; *Griggs vs. A.B. Chance Co.*, 503 S.W.2d 697, 705 (Mo.App. 1973), including "a causal connection between the injury and the job." *Royal*, 194 S.W.3d at 376, (citing *Williams v. DePaul Health Ctr.*, 996 S.W.2d 619, 631 (Mo.App. 1999)), *overruled on other grounds by Hampton*, 121 S.W.3d at 226.

Claimant has met her burden to prove that she sustained an injury that was clearly work related, and that her work for Employer was a substantial factor in causing her right hand, right wrist, left hand and left wrist injury and resulting disability. I find that she sustained a compensable occupational disease from cumulative repetitive trauma that continued through October 13, 2004 that resulted in injury to her right hand, right wrist, left hand, and left wrist, and the need for her right carpal tunnel surgery on August 3, 2005, and permanent partial disability. I find that she was exposed to a risk that was greater than and different from that which affects the public generally. I find that Dr. Stuckmeyer credibly proved the probability that Claimant sustained an occupational disease from repetitive trauma that was caused by conditions in Claimant's workplace.

I do not find that Claimant's injury was from a single accident. Claimant did not attribute it to a single accident, and the medical evidence did not either. I find that the credible evidence established that Claimant sustained a gradual and progressive injury which resulted from repeated and constant exposure to hazards encountered by Claimant in Employer's workplace that resulted in injury to her right hand, right wrist, left hand, and left wrist, and in the need for her right carpal tunnel surgery on August 3, 2005. I find that the performance of Claimant's usual and customary duties working for Employer led to a breakdown or change in pathology. I find that no credible evidence was presented that Claimant engaged in any other activity or had any accidents away from work during the time that she worked for Employer, or thereafter, that caused her carpal tunnel syndrome or the need for carpal tunnel syndrome surgery.

Claimant worked for Employer thirty to thirty-six hours per week for approximately two consecutive years except for a period in the summer and early fall in 2004. She performed the same duties during that period. Her duties required her to repetitively and continuously use her upper extremities. She picked up pans and dishes, cleaned up dishes, scraped dishes, rinsed dishes, put dishes in a dishwasher, lifted and carried plates, carried coffee cups, cleaned large skillets, changed towels, put up trash, tied knots in trash bags, scrubbed showers, tubs, sinks, and cabinets, used a squeeze pump, swept and mopped floors, twisted mops with her hands, picked up laundry, untangled laundry, folded laundry, vacuumed, moved furniture, peeled potatoes, opened cans with a hand crank, opened medicine bottles with childproof caps, and wrote medication dosages, doctors' orders and nursing assessments.

Claimant's symptoms began while she was working for Employer. They got worse while she worked for Employer. She had numbness and tingling in her hands and pain in her wrists. Her symptoms caused her to wake up at night. She had trouble lifting. Her hands fell asleep easily. She dropped things.

Claimant saw Nola Moore in Dr. Main's office in October 2004. Claimant complained of paresthesia that woke her up at night and of dropping items. Claimant was treated for her right and left wrist complaints. Braces were provided to Claimant. In December 9, 2004, an EMG noted moderate right-sided carpal tunnel and no evidence of left-sided carpal tunnel. Surgery was discussed on December 17, 2004, but Claimant was not interested in surgery at that time. Claimant had surgery on August 3, 2005 for right carpal tunnel syndrome. Dr. Stuckmeyer stated that Claimant's occupational duties were a substantial factor, if not the substantial factor to cause her to develop the bilateral carpal tunnel syndrome and overuse syndrome of her upper extremities, the necessity for the surgical procedure, and disability. He noted that the nature of Claimant's employment required her to do those tasks on a repetitive basis and on a much greater magnitude than what is done as a person's ordinary household duties. He noted that the tasks at Employer required Claimant to continuously grasp, push, pull, flex, and extend the wrists with various amounts of weight and pressure placed upon the hands and wrists. He stated that all of the tasks performed by Claimant in the course and scope of her employment at Employer were all stresses on the wrists that were repetitive trauma on the wrists, hands, and arms.

Dr. Concannon did not feel that Claimant's employment was causally responsible for the carpal tunnel. He stated that Claimant worked part-time and did not put in a lot of hours. He stated Claimant worked as a nurse aid/personal assistant. He stated that the fact that her symptoms worsened after she left her job was another indication. But Dr. Concannon did not review Claimant's deposition. I find that Claimant worked sufficient hours to cause the carpal tunnel syndrome. I also find that Claimant's condition did not worsen after she left Employer, but rather, her numbness had persisted without improvement. Further, Dr. Concannon did not describe Claimant's work duties and conditions in detail. I find that Dr. Concannon's opinion was based on an incomplete description of Claimant's work duties and work conditions while she was employed by Employer. I find that Dr. Concannon's opinion regarding the cause of Claimant's carpal tunnel condition is not credible.

I find that the medical evidence and testimony supports the conclusion that Claimant's work for Employer was a substantial factor in causing her right hand, right wrist, left hand and left wrist injury and disability. I find that Claimant sustained a compensable injury to her right hand, right wrist, left hand and left wrist arising out of and in the course of her employment for Employer.

NOTICE OF INJURY

Claimant was not required to prove notice of her repetitive trauma occupational disease upper extremity injury. The notice requirement in Section 287.420, RSMo does not apply to occupational diseases. *Endicott v. Display Technologies, Inc*., 77 S.W.3d 612, 616 (Mo. 2002).

PAST MEDICAL BILLS

What is Employer/Insurer's liability, if any, for past medical bills ?

The employee must prove that the medical care provided by the physician selected by the employee was reasonably necessary to cure and relieve the employee of the effects of the injury. *Chambliss v. Lutheran Medical Center*, 822 S.W.2d 926 (Mo.App. 1991), *overruled in part on other grounds by Hampton, 121 S.W.3d at* 229; *Jones v. Jefferson City School District*, 801 S.W.2d 486, 490-91 (Mo.App. 1990), *overruled in part on other grounds by Hampton, 121 S.W.3d at* 230; *Roberts v. Consumers Market*, 725 S.W.2d 652, 653 (Mo.App. 1987); *Brueggemann v. Permaneer Door Corporation*, 527 S.W.2d 718, 722 (Mo.App. 1975). The employee may establish the causal relationship through the testimony of a physician or through the medical records in evidence that relate to the services provided. *Martin v. Mid-America Farm Lines, Inc*., 769 S.W.2d 105 (Mo. 1989); *Meyer v. Superior Insulating Tape*, 882 S.W.2d 735, 738 (Mo.App. 1994), *overruled in part on other grounds by Hampton, 121 S.W.3d at* 228; *Lenzini v. Columbia Foods*, 829 S.W.2d 482, 484 (Mo.App. 1992), *overruled in part on other grounds by Hampton, 121 S.W.3d at* 229; *Wood v. Dierbergs Market*, 843 S.W.2d 396, 399 (Mo.App. 1992), *overruled in part on other grounds by Hampton, 121 S.W.3d at* 229. The medical bills in *Martin* were shown by the medical records in evidence to relate to the professional services rendered for treatment of the product of the employee's injury. *Martin*, 769 S.W.2d at 111.

Section 287.140.1, RSMo, provides in part: 'If the employee desires, he shall have the right to select his own physician, surgeon, or other requirement at his own expense." The Court in *Sheehan v. Springfield Seed & Floral, Inc.*, 733 S.W.2d 795 (Mo.App. 1987), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 226, stated at 798:

In general, only when an employer has notice that a claimant needs treatment or demand is made on the employer to furnish medical treatment and he neglects to provide needed treatment, will the employer be held liable for medical treatment for the employee. *Hawkins v. Emerson Electric Co.,* 676 S.W.2d 872, 880 (Mo.App.1984). Implicit in the above rule is knowledge by the employee that he has suffered a job related disability. Where an employee does not know at the time that he or she receives medical treatment that he or she has suffered a compensable injury, and the employee contracts for medical services without the employer's knowledge, the employer is not relieved from liability for necessary medical services. *Beatty v. Chandeysson Electric Co.,* 238 Mo.App. 868, 190 S.W.2d 648, 656 (1945). Generally, a compensable injury under the occupational disease provision becomes apparent when an employee is medically advised that he or she can no longer physically continue in the suspected employment. *Moore v. Carter Carburetor Div. ACF Industries*, 628 S.W.2d 936, 941 (Mo.App.1982).

The law in Missouri provides that while the employer has the right to name the treating physician, it waives that right by failing or neglecting to provide necessary medical aid to the injured worker. *Emert v. Ford Motor Co.,* 863 S.W.2d 629, 631 (Mo.App. 1993), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 228; *Shores v. General Motors Corp.,* 842 S.W.2d 929, 931

(Mo.App. 1992), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 229; *Herring v. Yellow Freight System, Inc.*, 914 S.W.2d 816, 822 (Mo.App. 1995), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 227; *Hawkins v. Emerson Elec. Co.*, 676 S.W.2d 872, 879 (Mo.App. 1984). The Court in *Shores* stated at 931-932:

The case law under § 287.140(1) establishes the employer's right to provide medical treatment of its choice, however, this right is waived when the employer fails to provide necessary medical treatment after receiving notice of an injury. *Wiedower v. ACF Indus., Inc.*, 657 S.W.2d 71, 74 (Mo.App.1983). 'Where the employer with notice of an injury refuses or neglects to provide necessary medical care, the [claimant] may make his own selection and have the cost assessed against the employer.' *Id.*

In the present case, there is substantial evidence which supports a finding that employer had notice of claimant's injuries and refused to provide medical treatment. On the day she was injured, and thereafter whenever the pain made it difficult to work, claimant reported to the plant dispensary to receive medical aid. At some point, a nurse at the dispensary informed claimant that she was no longer welcome and should consult her own doctor for further treatment.

In the case at hand, after experiencing pain in her wrists, Claimant reported her hand complaints to her supervisor in October 2004 and said she was going to Dr. Main's office. Claimant's attorney, Rick Koenig, wrote Employer on December 28, 2004 and advised of his representation of Claimant concerning injury to her upper extremities due to an occupational disease and specifically due to lifting furniture. The letter stated that Claimant was in need of medical treatment and requested that his letter be forwarded on to Employer's insurance company with the further request that they contact Mr. Koenig to discuss Claimant's claim and need for treatment. Claimant's Claim for Compensation was filed on February 14, 2005. It alleged an injury to Claimant's right and left upper extremities. Employer's counsel deposed Claimant on June 17, 2005 and learned then of the injuries she claimed. Employer was given the opportunity to obtain medical records and to have Claimant evaluated before her surgery. Employer did not send Claimant to a company physician or advise her that her injuries would be accepted as work-related. At no time did Employer authorize or direct Claimant to obtain medical treatment under workers' compensation. Employer produced no evidence that it ever offered treatment to Claimant pursuant to the Workers' Compensation Law in this case. Employer had notice of Claimant's injury, but refused to provide medical treatment. Claimant sought medical care and attention through her personal physician. I find that Employer waived the right to control Claimant's medical care. I have found that Claimant's claim is compensable. Claimant had the right to select her own medical provider and have the cost assessed against Employer.

Exhibit O included the medical bill of Moberly Regional Medical Center in the amount of $9,766.50. Exhibit P included the medical bill of Sweet Springs Therapy Center, Brunswick Therapy Center in the amount of $665.00. Exhibit Q included the medical bill of Heartland Neurology, LLC in the amount of $880.00. Exhibit R included the medical bills of Midwest Bone and Joint in total amount of $2,219.00. These medical bills were in the total amount of $13,530.50. Claimant's testimony, the medical bills, and the medical treatment records all demonstrate that all of these bills were incurred by Claimant to treat her carpal tunnel injury. Dr. Stuckmeyer stated in his November 19, 2005 report that the medical bills for Claimant's treatment were fair and reasonable charges, and the medical treatment provided to her upper extremities, including the surgery on the right upper extremity, was reasonable and necessary to cure and relieve Claimant of the injuries caused by her occupational duties. Dr. Concannon

stated that Dr. Main's treatment was reasonable and appropriate treatment to help cure and relieve Claimant of the effects of the carpal tunnel syndrome. Further, Employer's attorney stipulated at the hearing that the medical bills incurred to treat Claimant were reasonable and necessary, and the charges were fair and reasonable.

I find that the medical bills identified in Exhibits O, P, Q, and R in the total amount of $13,530.50 were reasonable and necessary and causally related to Claimant's injury sustained in the course of her employment for Employer, and that they should be paid by Employer. Claimant is awarded the sum of $13,530.50 from Employer/Insurer for these past medical expenses. I hereby order Employer/Insurer to pay Claimant the sum of $13,530.50 for past medical expenses.

MILEAGE

Section 287.140.1, RSMo provides in part: "When an employee is required to submit to medical examinations or necessary medical treatment at a place outside of the local or metropolitan area from the place of injury or the place of his residence, the employer or its insurer shall advance or reimburse the employee for all necessary and reasonable expenses; . . ." Exhibit M itemized 652 miles of medical mileage of Claimant from October 18, 2004 to December 17, 2004 and 488 miles of medical mileage from July 22, 2005 to August 29, 2005. Claimant testified that the medical mileage shown in Exhibit M was correct. Exhibit M documented trips made by Claimant from her home to Midwest Bone and Joint, Brunswick Physical Therapy, Heartland Neurology, and Moberly Regional Medical Center between October 18, 2004 and August 29, 2005. Exhibit M and the medical records admitted in evidence demonstrate that the mileage claimed by Claimant was for medical examinations or necessary medical treatment at a place outside of the local or metropolitan area from the place of injury or the place of Claimant's residence. The mileage rate during the period October 18, 2004 to December 17, 2004 was $0.345 per mile. The mileage rate during the period July 22, 2005 to August 29, 2005 was $0.375 per mile. Claimant is entitled to an award of medical mileage in the amount of $407.94 against Employer/Insurer. I hereby order Employer/Insurer to pay Claimant the sum of $407.94 in past due medical mileage benefits.

PERMANENT DISABILITY

What is the nature and extent of Claimant's permanent disability, if any, as a result of an injury by accident or occupational disease arising out of and in the course of her employment for Employer?

The determination of the degree of disability sustained by an injured employee is not strictly a medical question. *Landers v. Chrysler Corp.*, 963 S.W.2d 275, 284 (Mo.App. 1997); *Sellers v. Trans World Airlines, Inc*., 776 S.W.2d 502, 505 (Mo.App. 1989), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 230. While the nature of the injury and its severity and permanence are medical questions, the impact that the injury has upon the employee's ability to work involves factors, which are both medical and nonmedical. Accordingly, the Courts have repeatedly held that the extent and percentage of disability sustained by an injured employee is a finding of fact within the special province of the Commission. *Sharp v. New Mac Elec. Co-op*, 92 S.W.3d 351, 354 (Mo.App. 2003); *Elliott v. Kansas City, Mo., School District*, 71 S.W.3d 652, 656 (Mo.App. 2002), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 225; *Sellers*, 776 S.W.2d at 505; *Quinlan v. Incarnate Word Hospital*, 714 S.W.2d 237, 238 (Mo.App. 1986); *Banner Iron Works v. Mordis*, 663 S.W.2d 770, 773

(Mo.App. 1983);
Barrett, 595 S.W.2d at 443; *McAdams v. Seven-Up Bottling Works*, 429 S.W.2d 284, 289 (Mo.App. 1968). The fact-finding body is not bound by or restricted to the specific percentages of disability suggested or stated by the medical experts. *Lane v. G & M Statuary, Inc.*, 156 S.W.3d 498, 505 (Mo.App. 2005); *Sharp*, 92 S.W.3d at 354; *Sullivan v. Masters Jackson Paving Co*., 35 S.W.3d 879, 885 (Mo.App. 2001), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 225; *Landers*, 963 S.W.2d at 284; *Sellers*, 776 S.W.2d at 505; *Quinlan*, 714 S.W.2d at 238; *Banner*, 663 S.W.2d at 773. It may also consider the testimony of the employee and other lay witnesses and draw reasonable inferences in arriving at the percentage of disability. *Fogelsong v. Banquet Foods Corporation*, 526 S.W.2d 886, 892 (Mo.App. 1975).

The finding of disability may exceed the percentage testified to by the medical experts. *Quinlan*, 714 S.W.2d at 238; *McAdams*, 429 S.W.2d at 289. The Commission "is free to find a disability rating higher or lower than that expressed in medical testimony." *Jones v. Jefferson City School Dist*., 801 S.W.2d 486, 490 (Mo.App. 1990); *Sellers*, 776 S.W.2d at 505. The Court in *Sellers* noted that "[t]his is due to the fact that determination of the degree of disability is not solely a medical question. The nature and permanence of the injury is a medical question, however, 'the impact of that injury upon the employee's ability to work involves considerations which are not exclusively medical in nature.'" *Sellers*, 776 S.W.2d at 505. The uncontradicted testimony of a medical expert concerning the extent of disability may even be disbelieved. *Gilley v. Raskas Dairy*, 903 S.W.2d 656, 658 (Mo.App. 1995); *Jones*, 801 S.W.2d at 490.

Claimant testified that she now works as a case manager for the state. She does monthly home visits, personal plans, and write ups. She testified that her surgery in August 2005 resolved her symptoms for the most part, but the symptoms never went away completely. She testified that she continues to have problems with her hands. She said she still has numbness through her palm, index fingers, and ring fingers in both hands. She stated she does not have constant numbness and tingling. She said her hands wake her up at night once or twice most nights. When that happens, she shakes her hands. She said the pain in her hands varies depending on activity. It hurts her to lift skillets. She has people help with opening jars and gardening. It hurts her to shovel. It is hard for her to pull weeds. She said that she constantly shakes her hands to get feeling back when she drives. She said she is able to do her work duties. There was no evidence that Claimant had treatment for her upper extremity symptoms or condition with Nola Moore, Dr. Main, or any other doctor or medical provider after August 29, 2005.

Dr. Stuckmeyer's November 14, 2005 report stated that Dr. Stuckmeyer felt that Claimant had reached maximum medical improvement and that she suffered a 20% permanent partial disability to the right wrist and a 10% permanent partial disability to the left wrist at the 175 week level. He stated a 10% loading factor would be appropriate considering the bilateral nature of the injuries. No other doctors expressed opinions regarding the nature and extent of Claimant's permanent partial disability.

In light of Claimant's testimony and the medical evidence and the application of the Missouri Workers' Compensation Law, I find that Claimant has sustained a permanent partial disability of 8% of the body as a whole for injury to her right hand, right wrist, left hand, and left wrist as a result of a compensable injury to her right and left hands and wrists sustained in the course of her employment for Employer, and is entitled to 32 weeks of compensation at a rate of $129.06 per week, for a total of $4,129.92 in permanent partial disability benefits from Employer. I hereby order Employer/Insurer to

pay Claimant the sum of $4,129.92 in permanent partial disability benefits at the rate of $129.06 per week.

TEMPORARY TOTAL DISABILITY

What is Employer/Insurer's liability for past temporary total disability?

The burden of proving entitlement to temporary total disability benefits is on the Employee. *Boyles v. USA Rebar Placement, Inc.* 26 S.W.3d 418, 426 (Mo.App. 2000), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 225; *Cooper v. Medical Center of Independence*, 955 S.W.2d 570, 575 (Mo.App. 1997), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 226. Section 287.170.1, RSMo provides that an injured employee is entitled to be paid compensation during the continuance of temporary total disability up to a maximum of 400 weeks. Total disability is defined in Section 287.020.7, RSMo as the "inability to return to any employment and not merely . . . [the] inability to return to the employment in which the employee was engaged at the time of the accident." Compensation is payable until the employee is able to find any reasonable or normal employment or until his medical condition has reached the point where further improvement is not anticipated. *Cooper*, 955 S.W.2d at 575; *Vinson v. Curators of Un. of Missouri*, 822 S.W.2d 504, 508 (Mo.App. 1991); *Phelps v. Jeff Wolk Construction Co*., 803 S.W.2d 641, 645 (Mo.App. 1991); *Williams v. Pillsbury Co*., 694 S.W.2d 488, 489 (Mo.App. 1985).

Temporary total disability benefits should be awarded only for the period before the employee can return to work. *Boyles*, 26 S.W.3d at 424; *Cooper*, 955 S.W.2d at 575; *Phelps*, 803 S.W.2d at 645; *Williams*, 649 S.W.2d at 489. With respect to possible employment, the test is "whether any employer, in the usual course of business, would reasonably be expected to employ Claimant in his present physical condition." *Boyles*, 26 S.W.3d at 424; *Cooper*, 955 S.W.2d at 575; *Brookman v. Henry Transp*., 924 S.W.2d 286, 290 (Mo.App. 1996). A nonexclusive list of other factors relevant to a claimant's employability on the open market includes the anticipated length of time until claimant's condition has reached the point of maximum medical progress, the nature of the continuing course of treatment, and whether there is a reasonable expectation that claimant will return to his or her former employment. *Cooper*, 955 S.W.2d at 576. A significant factor in judging the reasonableness of the inference that a claimant would not be hired is the anticipated length of time until claimant's condition has reached the point of maximum medical progress. If the period is very short, then it would always be reasonable to infer that a claimant could not compete on the open market. If the period is quite long, then it would never be reasonable to make such an inference. *Boyles*, 26 S.W.3d at 425; *Cooper*, 955 S.W.2d at 575-76.

Claimant seeks four weeks of past temporary total disability benefits. Claimant had right carpal tunnel surgery on August 3, 2005. Claimant saw Nola Moore on August 15, 2005. She removed Claimant's sutures and recommended a continuation of Claimant's activity restrictions. Claimant was released from treatment on August 29, 2005. Dr Stuckmeyer stated that he believed that it was reasonable and necessary to have Claimant temporarily and totally disabled for a period of four weeks following her surgery on the right wrist, to cure and relieve her of the effects of the injuries caused as a direct result of the occupational duties which became disabling to her on October 13, 2004. I find that as a result of her work injury on October 13, 2004, and the right carpal tunnel surgery on August 3, 2005 that was necessary to treat her injury, Claimant was not able to return to work, and that she was temporarily and

totally disabled, from August 3, 2005 until she was released from treatment on August 29, 2005, or 3 6/7 weeks. The parties stipulated that the temporary total disability rate in this case is $67.71 per week. Claimant is therefore entitled to an award in the amount of $261.17 in past temporary total disability benefits against Employer/Insurer. I hereby order Employer/Insurer to pay temporary total disability benefits in the amount of $261.17 for 3 6/7 weeks for the period August 3, 2005 through August 29, 2005 at the rate of $67.71 per week.

FUTURE MEDICAL AID

What is Employer/Insurer's liability for future medical aid?

Claimant is requesting an award of future medical aid. Section 287.140, RSMo requires that the employer/insurer provide "such medical, surgical, chiropractic, and hospital treatment … as may reasonably be required … to cure and relieve [the employee] from the effects of the injury." This has been held to mean that the worker is entitled to treatment that gives comfort or relieves even though restoration to soundness [a cure] is beyond avail. *Bowers*, 132 S.W.3d at 266. Medical aid is a component of the compensation due an injured worker under section 287.140.1, RSMo. *Bowers*, 132 S.W.3d at 266; *Mathia v. Contract Freighters, Inc*., 929 S.W.2d 271, 277 (Mo.App. 1996). The employee must prove beyond speculation and by competent and substantial evidence that his or her work related injury is in need of treatment. *Williams v. A.B. Chance Co*., 676 S.W.2d 1 (Mo.App. 1984). Conclusive evidence is not required. *Bowers*, 132 S.W.3d at 270; *Landers v. Chrysler Corp.*, 963 S.W.2d 275, 283 (Mo.App. 1997), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 226. It is sufficient if Claimant shows by reasonable probability that he or she is in need of additional medical treatment. *Bowers*, 132 S.W.3d at 270; *Mathia*, 929 S.W.2d at 277; *Downing v. Willamette Industries, Inc.*, 895 S.W.2d 650, 655 (Mo.App. 1995); *Sifferman v. Sears, Roebuck and Co.*, 906 S.W.2d 823, 828 (Mo.App. 1995), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 227. "Probable means founded on reason and experience which inclines the mind to believe but leaves room to doubt." *Tate v. Southwestern Bell Telephone Co.*, 715 S.W.2d 326, 329 (Mo.App. 1986); *Sifferman* at 828. Section 287.140.1, RSMo does not require that the medical evidence identify particular procedures or treatments to be performed or administered. *Talley v. Runny Meade Estates, Ltd.*, 831 S.W.2d 692, 695 (Mo.App. 1992); *Bradshaw v. Brown Shoe Co.*, 660 S.W.2d 390, 394 (Mo.App. 1983), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 231.

The type of treatment authorized can be for relief from the effects of the injury even if the condition is not expected to improve. *Bowers*, 132 S.W.3d at 266; *Landman v. Ice Cream Specialties, Inc*., 107 S.W.3d 240, 248 (Mo.banc 2003), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 224. Future medical care must flow from the accident, via evidence of a medical causal relationship between the condition and the compensable injury, if the employer is to be held responsible. *Bowers*, 132 S.W.3d at 270. Medical aid may be required even though it merely relieves the employee's suffering and does not cure it, or restore the employee to soundness after an injury or occupational disease. *Mathia*, 929 S.W.2d at 277; *Stephens v. Crane Trucking, Incorporated*, 446 S.W.2d 772, 782 (Mo. 1969); *Brollier v. Van Alstine*, 236 Mo.App. 1233, 163 S.W.2d 109, 115 (1942). To relieve a condition is to give ease, comfort or consolation, to aid, help, alleviate, assuage, ease, mitigate, succor, assist, support, sustain, lighten or diminish. *Stephens*, 446 S.W.2d at 782; *Brolier*, 163 S.W. 2d at 115. The employer/insurer may be ordered to provide medical and hospital treatment to cure and relieve the employee from the effects of the injury even though some of such treatment may also give relief from

pain caused by a preexisting condition. *Hall v. Spot Martin*, 304 S.W.2d 844, 854-55 (Mo. 1957).

The record of Nola Moore of Midwest Bone and Joint dated August 29, 2005 noted that Claimant's paresthesias had resolved. Claimant was released from care on August 29, 2005. There was no evidence that Claimant was treated by Dr. Main, Nola Moore, or anyone else for her right or left hands or wrists after August 29, 2005. Dr. Stuckmeyer stated in his November 14, 2005 report that he felt that Claimant had reached maximum medical improvement. He did not recommend any further treatment for her. Claimant told Dr. Stuckmeyer that she was improved concerning the right wrist and denied symptoms of numbness and tingling or nocturnal awakedness. She was taking no medications. Dr. Stuckmeyer noted full range of motion of the right and left wrists. Claimant had a slightly positive Tinel's sign and Phalen's sign on the right. She had a negative Tinel's sign and negative Phalen's sign on the left.

There was no evidence that an EMG or NCV was performed on Claimant after her surgery on August 3, 2005. Dr. Stuckmeyer's reports do not discuss any such tests. Neither do Dr. Concannon's report or deposition. The only EMG/NCV report admitted in evidence was the December 9, 2004 EMG/NCV report of Heartland Neurology, LLC.

Dr. Concannon's report dated August 25, 2006 did not discuss whether Claimant needed additional medical treatment. The report did not address any treatment recommendations. The report noted that at that time, when discussing the prior diagnosis of right carpal tunnel syndrome he thought Claimant was suffering from either recurrent carpal tunnel syndrome or persistent carpal tunnel syndrome related to her persistence of symptoms noted to be improved. The report also noted that Claimant had a mild to moderate carpal tunnel syndrome developing on the left. He also noted that since her surgery, she had not had further medical or surgical treatment for those issues. He stated that since the surgery, Claimant had gotten improvement in her symptoms, but not complete resolution of her symptoms. His physical examination was essentially completely normal except for subjectively, Claimant's complaint of a pins and needles or numbness type feeling within the median nerve distribution of the right and to a lesser extent, the left.

Dr. Concannon testified in his deposition on May 24, 2007 that he recommended carpal tunnel release on both the right and left hands. But he did not explain the basis or foundation for that recommendation. He did not discuss any objective tests. His report and deposition made no mention of any Phalen's or Tinel's testing or EMG/NCV testing he had performed or reviewed.

Dr. Stuckmeyer noted in his January 29, 2008 report that Dr. Concannon had recommended additional treatment for Claimant's bilateral carpal tunnel syndrome. Dr. Stuckmeyer's report stated that he did not disagree with Dr. Concannon's opinion that Claimant would benefit from additional treatment. But Dr. Stuckmeyer did not explain the basis for that opinion. He only examined Claimant one time, and that was in November 2005. He did not review any current EMG/NCV tests.

Based on all of the evidence and the application of The Workers' Compensation Law, I find that there was insufficient evidence in the record to prove that Claimant needs additional medical treatment to cure or relieve her of the effects of her work injury. Claimant's request for future medical treatment is denied.

DISFIGUREMENT

The Court viewed Claimant's right wrist at the hearing in this case and advised that he would award no disfigurement if the case were found to be compensable. The Court observed no visible scar on Claimant's right wrist that would entitle her to an award of disfigurement. No disfigurement is awarded to Claimant.

CONCLUSION

For all these reasons, and based on substantial and competent evidence, and the application of The Missouri Workers' Compensation Law, I find in favor of Claimant. I find that Claimant has met her burden of proof that she sustained an injury by a cumulative repetitive occupational disease arising out of and in the scope and course of her employment for Employer through October 13, 2004 that resulted in injury to her right hand, right wrist, left hand and left wrist, and the need for her right carpal tunnel surgery on August 3, 2005, and permanent partial disability. I further find that her claims for permanent partial disability benefits, past temporary total disability benefits, and past medical expenses, including mileage, should be allowed, and are hereby awarded in accordance with the foregoing Findings of Fact and Rulings of Law. Claimant is awarded no disfigurement. Claimant's claim for future medical benefits is denied. Claimant's attorney, Rick E Koenig is awarded a fee in the amount of 25% of all amounts awarded from Employer. Claimant's Claim against the Second Injury Fund has not been determined and remains open.

Date: **April 10, 2008** Made by: **/s/ Robert B. Miner**

Robert B. Miner
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

/s/ Jeffrey W. Buker
Jeffrey W. Buker, Director
Division of Workers' Compensation

Sabrina L. Brock testified that she is now known as Sabrina L. Fisher. She will be referred to as Sabrina L. Brock or Claimant in this Award.

It is presumed that "STG's" means "short-term goals" and "LTG's" means "long-term goals."

Stedman's Medical Dictionary 1988 (28th Ed. 2006) notes that Hashimoto's disease is a synonym of Hashimoto's thyroiditis which is defined as "diffuse infiltration of the thyroid gland with lymphocytes, resulting in diffuse goiter, progressive destruction of the parenchyma and hypothyroidism."

Sections 287.067.1, 2, RSMo (2000). All statutory references are to the Revised Statutes of Missouri 2000, unless otherwise noted. See *Lawson v. Ford Motor Co.*, 217 S.W.3d 345 (Mo.App. 2007) where the Eastern District Court of Appeals held that the 2005 amendments to Sections 287.020, RSMo and 287.067, RSMo do not apply retroactively. In a workers' compensation case, the statute in effect at the time of the injury is generally the applicable version. *Chouteau v. Netco Construction*, 132 S.W.3d 328, 336 (Mo.App. 2004); *Tillman v. Cam's Trucking Inc*., 20 S.W.3d 579, 585-86 (Mo.App. 2000).

Claimant testified that her last day of work for Employer was the end of October or the first of November 2004. Claimant's Claim for Compensation, Exhibit F, states that the date of Claimant's accident or occupational disease was "10/13/04." The Court notes that Employer's Report of Injury filed in this case states in part, "Eee quit job 10-13-04." The medical records do not appear to address the last day Claimant

worked for Employer. I find that the date of onset of Claimant's occupational disease was through October 13, 2004.